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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 209

RAILROAD TRANSFER SERVICE, INC., A DELAWARE CORPORATION,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; AND JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION.

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OCTOBER TERM, 1965.

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RAILROAD TRANSFER SERVICE, INC., A DELAWARE CORPORATION,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; AND JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION.

OPINION BELOW.

The Opinion of the Court of Appeals is reported as *Railroad Transfer Service, Inc.* v. *City of Chicago*, 358 F. 2d 55 (1966).

QUESTION PRESENTED.

Did the District Court abuse its discretion in determining that no controversy existed within the meaning of the Declaratory Judgment Act, in regard to provisions of an ordinance which have not been applied to petitioner and which purport to impose reasonable safety regulations?

REASONS FOR DENYING THE PETITION.

I.

The petitioner, whose interstate business has in no way been impeded, cannot properly attack provisions of an ordinance which have not been applied to it.

The present action was one brought under the Declaratory Judgment Act, 28 U. S. C. A. § 2201 (App. p. 5). Both the District Court and the Court of Appeals found that there was no case or controversy as required by the Act. The District Court, in its opinion, stated (Rec. p. 5):

> "Thus far there is no indication that the City has taken or will take any action in the exercise of its police powers that would either interfere with interstate commerce or would violate the plaintiff's right to due process of law."

The Court of Appeals said (*Railroad Transfer Service, Inc.* v. *City of Chicago,* 358 F. 2d 55 (1966) at p. 59):

> "No actual controversy has been presented to the district court as required by 28 U. S. C. A. § 2201."

In *Lehon* v. *City of Atlanta,* 242 U. S. 53 (1916), this Court said (242 U. S. at p. 56):

> "To complain of a ruling one must be made the victim of it. One cannot invoke to defeat a law an apprehension of what might be done under it and, which if done, might not receive judicial approval."

In regard to an action brought under the Declaratory Judgment Act, 28 U. S. C. A. § 2201, this Court, in *Public Affairs Press* v. *Rickover,* 369 U. S. 111 (1961), stated (369 U. S. at p. 112):

> "The Declaratory Judgment Act was an authorization not a command. It gave the federal courts com-

petence to make a declaration of rights; it did not impose a duty to do so. Of course a District Court cannot decline to entertain such an action as a matter of whim or personal disinclination. 'A declaratory judgment like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest.' *Eccles* v. *Peoples Bank,* 333 U. S. 426, 431."

On August 26, 1960, prior to the filing of this case, petitioner applied for and received licenses for its twenty vehicles for the year 1960 from the Public Vehicle License Commission of the City of Chicago (Rec. 140). At that time petitioner had complied with the requirements of the ordinance of the City of Chicago (Rec. 140). Since that time petitioner has, each year, deposited with the Clerk of the District Court its license fees (Rec. 140), and has carried on its terminal operation without interruption (Rec. 140).

When the City Council was in the process of setting up a schedule of fees for Public Passenger Vehicle Licenses, petitioner, on August 12, 1959, wrote to the Public Passenger Vehicle License Commissioner suggesting certain fees. The difference between the fees suggested by petitioner for the licensing of all twenty of its vehicles and the fees enacted by the Council is $460 per year (App. 65, 66). Since petitioner carries about 1,423,500 passengers per year, such difference amounts to an infinitesimal amount per passenger (Rec. 66).

It is not disputed that the City may exact a reasonable license fee for the use of its streets (Pet. p. 15). As this Court stated in *Chicago* v. *Atchison, T. & S. F. R. Co.,* 357 U. S. 77 (1958) at p. 88:

"Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles

must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of these vehicles and exact reasonable fees for their use of local streets."

The record in the case at bar does not indicate that anything more is being required of the petitioner than that it fill out the necessary application and pay the required license fee (Rec. 140).

The District Court made this point clear. The court, citing *Continental Baking* v. *Woodring*, 286 U. S. 352 (1932), said (Rec. pp. 142, 143):

> "There is no justiciable controversy, and the complaint is therefore premature. I reached this conclusion after carefully reading the case of *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, which was cited by Judge Schnackenberg in *Atchison* at page 938. The Court in the *Woodring* case considered provisions of an ordinance which were at least as onerous as those set forth in the Chicago ordinance involved here, including the regulation that the vehicles there involved should be maintained in a 'safe and sanitary condition.' After first giving its approval to the requirements made by the ordinance, the Court in the *Woodring* case went on to say (at page 369):
>
> > 'In this respect as well as in relation to the other matters above-mentioned, appellants had no right to resort to equity merely because of an anticipation of improper or invalid action in administration. *Smith* v. *Cahoon* (283 U. S. 553, 563); *Dalton Adding Machine Co.* v. *State Corporation Comm.*, 236 U. S. 699, 700, 701.'
>
> "And so it seems to me in this case, that in raising the specter of possible arbitrary action on the part of the Commissioner, the plaintiff is complaining about having its interstate foot stepped on before the Commissioner has taken any important action beyond collecting the license fee to which the City is entitled."

The petitioner's cause of action is based on an apprehension, not a reality, and the District Court did not abuse its discretion in finding that there was no present controversy.

II.

Section 28-6 of the Municipal Code of Chicago is phrased in terms of permissible safety regulations which have not been applied to petitioner.

The petitioner's attempt to create controversy requires a strained interpretation of certain provisions of Chapter 28 of the Municipal Code of Chicago. These provisions, which have never been applied to petitioner, cannot be said to unambiguously impose unpermitted restraints on interstate commerce.

Petitioner's principal argument concerns itself with Section 28-6 of the Municipal Code of Chicago. This Section provides (Pet. p. 34):

> "Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the Commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued."

It is petitioner's position that after the decision in *Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U. S. 77 (1958), the City added a *new* requirement (Pet. p. 8) "that petitioner must prove *annually* to the Commissioner of licenses that it is 'qualified to pursue the occupation of a . . . coachman' before the license to transfer passengers between stations may be granted." According to petitioner (Pet. p. 9): "This clause is phrased strictly in terms of economic regulation that cannot be applied by the city to interstate commerce."

In 1958, when Chapter 28 of the Municipal Code of Chicago was before this Court, it read (Rec. p. 22):

> "Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year."

A comparison of the provision as it existed in 1958 and as it was amended in 1959 indicates that in 1958 the Section read (Rec. p. 22): "If the commissioner shall find that the applicant is qualified." Whereas, in 1959, this provision read (Pet. p. 34): "If the commissioner shall find that the applicant is qualified to pursue the occupation

of a cabman or coachman." In addition, in 1958, a license was issued (Rec. p. 23) "for the license period ending on the thirty-first day of December following the date of its issuance . . ." Whereas, in 1959, a license was issued (Pet. p. 34) "to terminate on the 31st day of December following the date of issue . . ."

There is no substantial difference between the ordinance as it existed at the time of the *Atchison* decision and the ordinance as it existed in 1959. Contrary to petitioner's contention, there is nothing in either provision "phrased strictly in terms of economic regulation" (Pet. p. 9).

It is apparent that the requirements of the ordinance, which the City has not attempted to enforce against petitioner, are framed in keeping with permissible safety regulations. The ordinance requires that an applicant be a "law abiding citizen;" that he show financial ability, *only to the extent necessary to render "safe and comfortable service;"* and that he "maintain or replace equipment for such service and . . . pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period." These requirements concern themselves with safety and "accessible responsibility", and do not conflict with existing federal regulations. *Railroad Transfer Service, Inc.* v. *City of Chicago,* 358 F. 2d 55, 57 (1966).

As stated by Justice Harlan in his dissenting opinion in *Chicago* v. *Atchison, T. & S. F. R. Co.,* 357 U. S. 77 (1958) at p. 90:

> "In determining whether Chicago's ordinance should now be annulled it must be borne in mind that local authorities are not foreclosed from regulating matters of local concern merely because there may be some incidental, but not burdensome, effect on interstate commerce. At least since *Cooley* v. *Board of Wardens,*

12 How. 299 it has been recognized that because regulation of local incidents of interstate transportation is, as a practical matter, beyond the effective reach of Congress, there would frequently be an undesirable absence of needed regulation unless States and municipalities were free to act."

In the present case the petitioner contends that an ordinance which has not been applied to it, and which is framed in terms of general safety requirements, raises a controversy within the meaning of the Declaratory Judgment Act. The petitioner has not, and cannot, show that there has been an unpermitted interference with interstate commerce, because there has been none. Its strained interpretation of the ordinance was properly rejected by the District Court and the Court of Appeals. If 28-6 of the Municipal Code of Chicago was applied to the petitioner it would impose restrictions of "responsibility and safety" which have long been considered proper subjects for local legislation.

III.

Other challenged provisions of the ordinance do not impose unpermitted burdens on interstate commerce, and there is no controversy within the meaning of the Declaratory Judgment Act.

The petitioner complains of three other provisions of the ordinance. It argues (Pet. p. 14): "Likewise, petitioner, a Delaware Corporation authorized to do business in Illinois, cannot lawfully be compelled to maintain its principal place of business in Chicago." Contrary to this statement, prior to the filing of this suit the petitioner voluntarily established its principal place of business in Chicago (Rec. 7). Petitioner maintains its principal place of business in the City not because of any compulsion, but because the nature of that business is transporting railroad passengers and

baggage from one railway terminal in Chicago to another railway terminal in Chicago.

Petitioner alleged in its complaint (Rec. p. 5): "That it is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business in the City of Chicago, Illinois." It does not allege that it wishes to maintain its principal place of business elsewhere. Surely no controversy is engendered by an ordinance requiring petitioner to do that which it is doing, especially where it has not expressed a desire to do anything else. This provision was held valid in *Evanston Cab Company* v. *City of Chicago*, 325 F. 2d 907 (7th Cir. 1963), certiorari denied 377 U. S. 943 (1964).

The petitioner argues (Pet. p. 14) that "[t]he restriction that only residents of Chicago may be employed as chauffeurs is obviously unreasonable and unrelated to traffic safety . . ." This provision is not contained in Chapter 28 of the Municipal Code of Chicago, which is the only Chapter that petitioner seeks to enjoin. The requirement that drivers of public vehicles be residents of Chicago was upheld in *City of Chicago* v. *Vokes*, 28 Ill. 2d 475 (1963), certiorari denied 377 U. S. 124 (1964).

Furthermore, there is no allegation that this requirement has in any way damaged petitioner or affected its ability to obtain competent drivers. Rather, petitioner's operation is conducted solely within the City of Chicago and a requirement that drivers reside in Chicago establishes, as the Court of Appeals pointed out, *Railroad Transfer Service, Inc. v. City of Chicago*, 358 F. 2d 55 (1966) at p. 58, "accessible responsibility."

Petitioner cites *Adams Express Co.* v. *New York*, 232 U. S. 14, 34 (1914), which it states (Pet. 14): "condemned a provision of an ordinance of the City of New York which had the practical effect of limiting drivers of express

wagons to residents of that City." In *Adams* the express company did a regular business with New Jersey and other cities outside of New York (232 U. S. at p. 28). Here petitioner's business is conducted solely within the City of Chicago.

The petitioner quotes from *Adams*, 232 U. S. at p. 34 (Pet. p. 14):

> "When . . . the obvious convenience of their being able to secure drivers in Jersey City as well as in New York, are considered, the provision would seem to be unnecessarily burdensome."

Petitioner fails to quote the next sentence of the opinion (232 U. S. at p. 34):

> "We are not called upon, however, to decide this point."

At a time when each year traffic accidents kill thousands of people and inflict millions of dollars worth of personal injury and property damage, to require "accessible responsibility" of drivers who operate solely within Chicago is not unrelated to traffic safety.

Finally, the petitioner argues (Pet. p. 13) that "[t]he City may not impose the requirement that petitioner shall file annually with the City a detailed statement of its expenses and earnings, and its balance sheet, and afford the City access to its books." This issue was not raised in the Complaint (Rec. 5), was not argued before the District Court (Rec. 13), or the Court of Appeals, 358 F. 2d 55 (1966). It is not properly before this Court on a petition for a writ of certiorari. There is nothing in the record to indicate that petitioner has been asked to comply with any such provision.

The petitioner's reliance (Pet. p. 14) on *Castle* v. *Hayes Freight Lines, Inc.*, 348 U. S. 61 (1954) and *Bibb* v. *Navajo*

Freight Lines, Inc., 359 U. S. 520 (1959), is misplaced. *Castle* v. *Hayes Freight Lines* dealt with a statute preventing interstate motor carriers from using Illinois highways because of repeated overweight violations. None of the City of Chicago's ordinances prevent Transfer from using the City's streets.

The *Bibb* case involved a statute of Illinois which required a type of mudguard for interstate carriers that differed from the conventional mudguard. The conventional mudguard was accepted in 45 States and was mandatory in Arkansas. This Court found that there was a compelling need for national uniformity so that interstate carriers would not be required to change equipment as they crossed state lines. Petitioner's vehicles do not cross state lines and are not subjected to conflicting regulations.

This Court, in *Bibb*, did point out, 359 U. S. at p. 524:

> "These safety measures carry a strong presumption of validity when challenged in Court. If there are alternate ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective. Policy decisions are for the state legislature absent federal entry into the field. Unless we can conclude on the whole record that 'the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interference which seriously impede it' (*Southern Pacific* v. *Arizona, supra*, pp. 775-776) we must uphold the statute."

Recognizing the presumption of validity in favor of the ordinance, it would be contrary to the policy of this Court, and the meaning of the Declaratory Judgment Act, to allow a cause of action under the Act in order to test the validity of provisions of an ordinance which have not been applied to the petitioner, and which in no way have interfered with its business.

The Court of Appeals summed up the issues of this case as follows (*Railroad Transfer Service, Inc.* v. *City of Chicago*, 358 F. 2d 55 (1966), at pp. 58, 59):

"Transfer has not pleaded any injury and consequently has not shown any burden on interstate commerce. Transfer's apprehensions do not generate an actual controversy. If the ordinance is applied beyond constitutional limits, Transfer will have its appropriate remedy. *Continental Baking Co.* v. *Woodring, supra*.[286 U. S. 352 (1932)].

* * * * *

"In sum, prior to the commencement of this action in 1960, Transfer complied with the provisions of the ordinance in question by making the necessary application for its Chicago vehicle licenses and paid the required fee of $1,630 for the year 1960. Thereafter, it paid into court the required license fees for 1961, 1962, and 1963.

"Since the filing of this action, Transfer has carried on its terminal transfer operation without interruption or interference by Chicago or any of the individual defendants.

"Chicago's authority to assess and collect its annual vehicle license fee has been established and the amount in question here is reasonable.

"Chicago concedes that it now has no right to prevent the operation of Transfer's business.

"Transfer operates wholly within the city limits of Chicago, has a complete monopoly and is without competition, except by licensed taxicabs.

"The ordinance provisions concerning safety, comfort, drivers, color of vehicles and financial responsibility reasonably relate to welfare and safety and are clearly within the local police powers of Chicago and do not burden interstate commerce or conflict with federal regulatory powers.

"There is no claim that the Commissioner or anyone else has issued any orders, rules or regulations in any way discriminating against Transfer.

"There is no claim that Chicago or anyone else has

applied the requirements of the ordinance in any manner to the detriment or harm of Transfer.

"There is no claim that Chicago or anyone else has acted under the ordinance in any manner to deny Transfer due process.

"Transfer's fears and apprehensions of what may happen to it under the ordinance have not been translated into realities.

"No actual controversy has been presented to the district court as required by 28 U. S. C. A. § 2201."

As pointed out by the Court of Appeals, the City recognizes that it cannot prevent the operation of interstate business, although it does have the authority to assess reasonable vehicle license fees and require compliance with safety regulations. As also pointed out by the Court of Appeals, petitioner has not pleaded any injury and has been conducting "its terminal transfer operation without interruption or interference by Chicago or any of the individual defendants." No actual controversy has been presented to the District Court as required by the Declaratory Judgment Act, and the petition should be denied.

CONCLUSION.

Petitioner has failed to show that a controversy exists within the meaning of the Declaratory Judgment Act. If the challenged provisions were applied to petitioner they would impose permissible safety regulations.

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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